



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/526,357	03/16/2000	Lecon Woo	1417Y P 415	2552

7590 01/30/2003

Paula J F Kelly Esq
Corporate Counsel, Renal Division
One Baxter Parkway, DF3-3E
Deerfield, IL 60015

EXAMINER

MULLIS, JEFFREY C

ART UNIT

PAPER NUMBER

1711

DATE MAILED: 01/30/2003

19

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/526,357	WOO ET AL.
	Examiner	Art Unit
	Jeffrey C. Mullis	1711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 02 December 2002.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-103 is/are pending in the application. 71
 4a) Of the above claim(s) 2-15, 17, 28-32, 43-47, 62-66, 70, 76-83, 85 and 96 is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1 16 18-27 33-42 48-61 67- 69 84 86-95 101-103 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) The translation of the foreign language provisional application has been received.
 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). _____.
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)
 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 14. 6) Other: _____

Art Unit 1711

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 16, 18-21, 23-27, 33-36, 38-42, 48-55, 57-61, 67, 68, 69, 84, 86-89, 91-95 and 101-103 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Babrowicz et al. (WO 97/36741).

See the previous Office action at page 3 line 5 et seq.

Claims 22, 37, 56, 71 and 90 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Babrowicz et al., cited above.

See the previous Office action at the paragraph bridging pages 4 and 5 et seq.

Art Unit 1711

Claims 1, 16, 18-21, 24-26, 33-36, 38-42, 48-55, 57-61, 67, 68, 69, 84, 86-89, 91-95 and 101-103 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Lundell et al. (USP 4,401,536).

Lundell discloses a composition having a high heat seal strength which is irradiated at column 3 lines 11-18. Note Examples 2-8A in Table 1 in column 7 which disclose compositions having greater than or equal to 50% by weight ethylene ethylacrylate copolymer and the balance polypropylene which are cross-linked by electron beam irradiation.

Both applicants' and patentees' compositions may contain identical materials in identical concentrations and having good heat seal properties and which may be cross-linked by radiation and therefore applicants' and patentees' characteristics reasonably appear to be the same.

When the reference discloses all the limitations of a claim except a property or function, and the Examiner cannot determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention, basis exists for shifting the burden of proof to applicant. Note In re Fitzgerald et al. 619 F. 2d 67, 70, 205 USPQ 594, 596, (CCPA 1980). See MPEP § 2112-2112.02.

Applicants' arguments filed 12-2-02 have been fully considered but they are not deemed to be persuasive.

Art Unit 1711

Applicants' German patent citation DE 4142271 and French Patent 2688511 have now been initialed on applicants' IDS since these references have now been considered.

With regard to Babrowicz, applicants argue that "a claim is anticipated only if each and every element as set forth in the claim is found either expressly or inherently described, in a single prior art reference. Clearly this is the law and the Examiner has no argument with applicants' position that each and every element must be present in a single prior art reference in order to anticipate claims." However the Examiner does not agree that the polyene component in Babrowicz's propylene/olefin copolymers are excluded by the claims. There is no such limitative language in the claims which excludes unnamed monomeric components from applicants' copolymeric constituents. Thus applicants' propylene containing polymers are embraced by patentees' EPDM. The term "propylene containing polymers" as is recited by applicants' claims in fact embraces any polymer containing propylene and any number of other monomeric components.

This Office action is not being made FINAL.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey Mullis whose telephone number is (703) 308-2820. The examiner can normally be reached on Monday-Friday from 9:30 to 6:30.

Art Unit 1711

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck, can be reached on (703) 308-2462. The fax phone number for this Group is before final (703) 872-9310 and after final (703) 8729311.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2351.

J. Mullis:cdc

January 29, 2003

James Seidleck
Primary Examiner
Art Unit 1711

